

Patrick Culver
TRCI # 20896675
82911 Beach access rd
Umatilla OR, 97882
Pro - Se

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United States district court
District of Oregon
Pendleton Division

2:19-cv-00492-MC

Patrick Culver
Plaintiff
v
mark nooth
Eastside Institutions
administrator:
Troy bowser
superintendent
TRCI: Bob
martinez counselor

Case no:
complaint 42
U.S.C 1983
(violation of
civil rights
under color
of Law) 42
U.S.C 12101
et seq
(Americans
with disabilities
act

Demand for
jury trial

verified
complaint

Introductory Statement
Paragraph # 1

1

This is a civil rights action brought by Plaintiff Patrick Culver in which he seeks relief for defendants violations of his rights secured by the U.S. Constitution including the Fourteenth and Eighth Amendments and the Civil Rights Act of 1983 and by the Americans with Disabilities Act of 1990, 42 U.S.C 12101 et. seq. Plaintiff seeks declaratory and injunctive relief, punitive & compensatory damages, including reasonable attorneys fees, cost & disbursements pursuant to 42 U.S.C 1988

2

Plaintiff who is a prison inmate suffering from

Severe mental illness is presently incarcerated in the mental health unit (mhu) at two Rivers Correctional Institution (TRCI) on or about 6-18-18 Plaintiff was bitten by a R.O.C kg dog while walking through the unit and then was punished for his responsive actions taken while in active status of his severe mental illness (SMI) via this action plaintiff seeks to vindicate his right to be free from cruel and unusual punishment and to receive therapeutic, safe, adequate medical care in a prison environment, free from attack from vicious dogs and retaliation from staff i.e. given major D.R

DSU time and fines

3

JURISDICTION and venue

Jurisdiction exists under 28 U.S.C 1331 because this action arises under the laws of the U.S Constitution. This court has jurisdiction over Plaintiff's claims under 28 U.S.C 1333 because Plaintiff has brought this action to seek redress for the deprivation of rights secured by the U.S Constitution

4

Venue is proper under 28 U.S.C 1331 (B)(2) because the acts & omissions

alleged herein occurred
in Umatilla County
Oregon

5
Parties

Plaintiff Patrick Culver is
an adult citizen of the
United States and the
State~~s~~ of Oregon who has
been in the custody of
ODOC, and housed at
TRCI in Umatilla, OR at
all times relevant to
this complaint

6

Defendants are and were
employees of ODOC at all
times material to this
complaint. At all times
relevant herein, each
defendant acted under

color of state law and
withing the course and
scope of their employment
Each defendant is sued
individually & in his offic
ial capacity

7

Defendant mark nooth was
at all times relevant the
eastside institutions
administrator

8

Defendant troy bowser was
at all times relevant herein
the superintendent of TRCI

9

Defendant Bob martinez
was at all times relevant
herein A counselor at
TRCI and one of the
hands of the Roc K9
Dog rescue program

10

Factual Allegations

Plaintiff A state prisoner is diagnosed by ODOC as severely mentally ill i.e. major depression and other unknown disorders. Upon information and belief Plaintiff is misdiagnosed as evidenced by his suicide attempts and categorized an MH2 when he is in fact an MH3 this is due to behavioral Health staffs deliberate indifference. Plaintiff's mental illness ^{which} negatively affects his everyday life and causes him difficulties in managing his activities of daily living

II

On or about 6-18-18 Plaintiff was walking through the dayroom towards a table to play a board ~~game~~ with other inmates when

an ROC K9 dog by the name of Phillip came lunging from under the table near the one Plainiff was heading for and bit him on the leg

12

After this occurred Plainiff began having active symptoms of his mental illness and was becoming increasingly stressed and anxiety ridden

13

Plaintiff told the dog handler inmate Jeremia Raber to "get the dog away from him", inmate Raber replied "no you get away from the dog", this exchange only increased Plaintiff's mental health crisis as he then kicked out at the dog nearly missing him and inmate

Raber in his crses

14

Plaintiff was then given a major misconduct report for inmate assault & Disrespect 1, disturbance and disobedience of an order, 1, Plaintiff was found guilty of all but the disturbance charged which was dismissed and sentenced to disciplinary segregation for 90 days loss of privileges for 28 days and a 200.00 fine

15

During this period isolation segregation Plaintiff deteriorated and attempted suicide twice while in the DSU, once by taking pills and trying to jump off the 2nd floor tier while being

escorted and once by attempting to hang him self, as a result Plaintiff spent 2 days in an outside hospital recovering from his injuries

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In the disciplinary report case # 1806 T.R.C.I 0109 TRCI 25 LT was noted that Plaintiff seemed very scared and startled by the dog

17

On 6-20-18, 7-30-18 and 7-18-18 Plaintiff wrote Kytes to R.O.C who said "this dog will no longer be allowed on the mHU" and mRS Stonecypher asking her to write a statement that she already seen

This dog Phillip attack me in her classroom to which she replied "I did write a statement already & emailed LT QmHP nelson"

19

on 7-10-18 Plaintiff filed a grievance TRCT - 2018-07-033 about this series of events

on 7-30-18 Defendant Martinez replied stating I acknowledge that canine Phillip has demonstrated reactivity towards you on several occasions & then went on to deny the grievance (Reactivity is a misnomer for aggressiveness)(emphasis mine)

19

Defendant went on to state that "There are times with a handler

IS required to give A brief and quick directive to someone" i.e (saying inmates can give other inmates commands\$)(emphasis mine) and then went on to deny the grievance appeal. Defendant bowser use of the words reactiveness to some individuals shows his awareness of this dogs prior attacks

20

on 9-29-18 Plaintiff filed grievance appeal T.R.C.I -2018-07-033-AA arguing that no known vicious dogs should ever have been allowed on the mhu in the first place and that inmates have "no authority over me, to do anything at anytime, if inmate Raber noticed Phillip being agitated by me then he himself

Should have gotten up & moved to another area as he is supposed to be the trained handler of R.O.C dogs

21

on 10-30-18 defendant nooth responded to this Final appeal TR.CI - 2018-07-033-AA concurring with Superintendent bowser and denying my appeal this exhausted all available administrative remedies for plaintiff

22

By defendants own admissions they were fully aware of a vicious dog on the mitu who had already tried to attack plaintiff several times and other inmates yet they did nothing about it until after the dog finally lunged at and bit

Plaintiff [REDACTED] and then they punished plaintiff for his reactions which were exacerbated by his SMI, which in turn exacerbated his SMI more and induced two suicide attempts, one of which required two days hospitalization

23

As a result of defendants actions plaintiff suffered severe pain and exacerbation of his SMI, major disciplinary action, 2 suicide attempts, 24 hours time, psychological torture

24

¶ First claim for relief

Deprivation of federal civil rights cruel & unusual punishment 42 U.S.C 1983 - violation of eighth amendment failure to protect

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Plaintiff realleges and

incorporates each allegation contained in paragraph 1 thru 24

26

As A state prisoner Plaintiff has the eighth amendment right to be Free from cruel and unus ual punishment while incarcerated & prison offi cials are responsible for providing safe living cond ltions and are not allowed by ~~the~~ Law to place inmates nor allow known vicious dogs to lunge at and attack smi Inmates , defendants are required to comply with applicable Law and policies protecting plaintiffs health and safety

27

Defendants are and were aware of Plaintiffs smi and placed him in direct danger by allowing A known vicious

dog onto an mhu unit, whom had already had an aggressive past.

28

Acting under color of state Law, defendants have knowingly disregarded excessive risks to plaintiffs health and wellbeing by refusing to take corrective actions and allowing and condoning a vicious dog onto the mhu that had on past occasions tried to attack plaintiff safety. corrective action would have included the granting of the grievance and or appeals, dismissing the major disciplinary report and the monetary fine. Defendants ongoing deliberate indifference to plaintiffs safety, and failure to take reasonable protective measures after the first attempted attack by canine Phillip

at this first attempt defendant martinez should have removed Phillip from the mhu permanently, instead defendant martinez chose to ignore this situation until it escalated & plaintiff was harmed has deprived plaintiff of his right to safe living conditions, defendants wrongful actions have included, allowing a known vicious dog on to the mhu, allowing plaintiff to be exposed to several past attempted attacks, exposed to pain & suffering mental duress, psychological torture, disciplinary segregation, monetary fines, being subjected to control by another inmate, this canine has also tried to attack others and was known by defendant martinez to be an vicious dog

29

The actions of defendant described herein have been malicious, deliberate intentional and embarked upon with knowledge of or in conscious disregard of the harm that would be inflicted on plaintiff. These actions caused direct harm to plaintiff. As a result of this intentional conduct plaintiff is entitled to punitive damages against defendants in their individual capacities in an amount sufficient to punish them & deter others from similar conduct

30

Defendants violated rights held by plaintiff which were clearly established & no reasonable official similarly situated to defendants could have believed his or her conduct was lawful or within the bounds of reasonable

discretion, defendants thus lack qualified or statutory immunity from suit or liability

~~¶~~ 31

As a direct and proximate result of these actions described herein, plaintiff sustained actual damages, including dog bite, mental torture, pain and suffering, anguish, psychological trauma, worsening of SMI, disciplinary report, monetary fine, segregation, all to his damage in an amount to be ascertained according to proof at trial.

~~¶~~ 32

Second claim, for relief deprivation of Federal civil rights, cruel and unusual punishment - inhumane conditions of confinement (42 U.S.C 1983 eighth Amendment)

Page 19, 1983 complaint

Plaintiff realleges and incorporates each & every allegation contained in paragraphs 1 thru 24

33

Defendants actions in allowing A known vicious dog who had attempted to attack others as well as Plaintiff onto an MHU unit where inmates are particularly vulnerable due to their SMI, subjecting Plaintiff to repeated Attempted Attacks and punishment of Plaintiff for active symptoms of his SMI (even though BHS staff failed to label this as such due to deliberate indifference) violate the eighth amendment's prohibition against cruel and unusual punishment of prisoners, moreover the mutually reinforcing effect of these abuses combined

to create a much more inhumane environment than the mere sum of each abuse. Plaintiff has the right not to be subjected to cruel & unusual punishment while in custody defendants actions were an imposition of cruel and unusual punishment against plaintiff

34

The actions of defendants described in this complaint have been malicious, deliberate, intentional and embarked upon with knowledge of or in conscious disregard of the harm that would be inflicted on plaintiff these actions caused direct harm to plaintiff. As the result of this intentional conduct, plaintiff is entitled to punitive damages against

defendants in their individual capacities in an amount sufficient to punish them and to deter others from similar conduct

#35

Defendants violated rights held by plaintiff which were clearly established & no reasonable official similarly situated to defendants could have believed that his or her conduct was lawful or within the bounds of reasonable discretion. Defendants thus lack qualified or statutory immunity from guilt or liability

36

As a direct & proximate result of the described herein, plaintiff sustained

actual damages, including pain and suffering, psychological torture, worsening of SMI, anguish, two induced suicide attempts major disciplinary action and Report, time in segregation all to his damage in an amount to be ascertained according to proof at trial

37

Third claim for relief
Americans with disabilities
Act (42 U.S.C 12101 et seq)

Plaintiff alleges & reincorporates each and every allegation contained in paragraphs 1 thru 24

38

Plaintiff suffers from mental disabilities that interfere with his major life activities including

major depression and other undiagnosed illnesses, defendants knew of or should have been aware of plaintiffs disabilities

39

Defendants subjected Plaintiff to discrimination on the basis of his disabilities & were deliberately indifferent to the need to accommodate plaintiffs mental disabilities which effectively deprived plaintiff of the services, programs or activities offered by TRCI to other prison inmates similarly situated including safe living conditions, adequate and appropriate grievance procedures, plaintiffs was otherwise qualified and entitled to

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ERCI is an institution that receives money from the federal government

41

Fourth claim for relief deprivation of federal civil rights Fourteenth amendment due process failure to protect (42 USC 1983)

Plaintiff realleges and reincorporates each and every allegation contained in paragraphs 1 thru 24

42

The fourteenth amendment to the US constitution forbids defendants from depriving plaintiff of his property without due process of the law

43

Defendants actions deny plaintiff of his right of

safe living conditions and proper adequate grievance procedures and did not follow proper prison procedure or applicable state or federal law. These wrongful, arbitrary actions deprived Plaintiff of his right to possess that property without due process of law

44

Defendants actions have been malicious, deliberate, intentional and embarked upon with knowledge of or in conscious disregard of, the harm that would be inflicted upon Plaintiff. These actions caused direct harm to Plaintiff. As a result of this intentional conduct, Plaintiff is entitled to

punitive ~~adversary~~ damages
against defendants in
an amount sufficient to
punish them + deter others
From similar conduct

45

Defendants violated rights
held by Plaintiff which
were clearly established
and no reasonable official
similarly situated to de-
fendants could have be-
lieved his or her conduct
was lawful or within the
bounds of reasonable dis-
cretion. defendants thus
lack qualified or statutory
immunity from suit or liab-
ility

46

As a direct + proximate
result of the actions
described herein plaintiff
sustained actual damages
including dog bites, pain

and suffering, psychological torture, major disciplinary action and fines, induce ment of suicide attempts exacerbating of SMI Loss of his personal property

47

AS A result of the above Plaintiff is entitled to an award of compensatory damages against defendants in an amount to be ascertained according to proof at trial

Prayer for Relief

wherefore, plaintiff respectfully prays that this court will enter a judgement in his favor and against defendants in an amount

to be proven at trial as follows

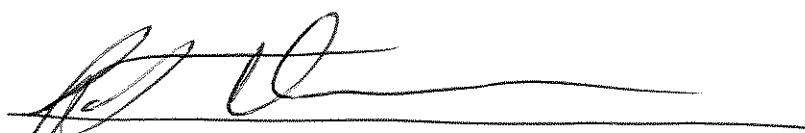
- A) For an award of punitive damages in an amount to be proven at trial
- B) For an award of compensatory damages in an amount to be proven at trial
- C) A ~~declaration~~ that the acts and omissions described herein violated Plaintiffs civil rights
- D) Injunctive relief, ordering defendants to dismiss the major misconduct report, restore plaintiffs fines immediately
- E) To create policy and procedures preventing known vicious dogs to be allowed on the mtu ever again
- F) For plaintiff reasonable Attorney Fees, costs and disbursements

G) For other such relief as this court deems appropriate, as the law permits & Justice requires

pursuant to 28 U.S.C. 1746
I hereby verify and declare under penalty of perjury that the foregoing is ~~TRUE~~ true and correct, except as to matters entered upon information and belief and as to those, I believe them to be true & correct

Respectfully
submitted

Dated 3-25-19



Patrick Culver
T.R.C.I. # 20896679
82911 Beach access rd
Umatilla OR, 97882

Page 30 1983 complaint pro se

CERTIFICATE OF SERVICE

CASE NAME: Culver v. Wootton et al

CASE NUMBER: (if known) _____

COMES NOW, Patrick Culver, and certifies the following:

I am incarcerated by the Oregon Department of Corrections at Two Rivers Correctional Institution, Umatilla, OR.

That on the 25 day of March, 20 19, I personally placed in the Correctional Institution's mailing service a **TRUE COPY** of the following:

1983 civil rights complaint

I placed the above in a securely enclosed, postage prepaid envelope, to the person(s) named at the places addressed below:

Number of copies 1 to:

Clerk of the court
Mary L. Moran
U.S.D.C. (Dist. of Or.)
1000 SW Third Ave.
Portland, OR 97204

Number of copies 1 to:

Number of copies 1 to:

Number of copies 1 to:


(Signature)

Print Name Patrick Culver

SID# 20896675

Two Rivers Correctional Institution

82911 Beach Access Rd

Umatilla, OR 97882